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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 7 - 1997

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 94-150
Regulations Governing Attribution)	
of Broadcast and Cable/MDS Interests)	
)	
Review of the Commission's)	MM Docket No. 92-51
Regulations and Policies)	
Affecting Investment in the)	
Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

To: The Commission

COMMENTS OF THE BLACKSTONE GROUP L.P.

The Blackstone Group L.P. ("Blackstone"), by its attorneys, hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking (the "FNPRM") in the above-referenced dockets.¹ Blackstone's comments will focus on proposed revisions to the attribution rules applicable to the cable/MDS cross-ownership provisions of the Communications Act of 1934, as amended, and the Commission's rules.² As demonstrated more fully below, Blackstone agrees with the Commission that the attribution rules currently

¹ Further Notice of Proposed Rulemaking in MM Dockets No. 94-150, 92-51 and 87-154, FCC 96-436 (rel. Nov. 7, 1996).

² 47 U.S.C. § 533(a); 47 CFR § 21.912(a).

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applied to these cross-ownership interests are overly restrictive and serve only to inhibit the ability of investors to provide needed financing to these media competitors.

In the FNPRM, the Commission asks for comment on proposed changes to the attribution rules applicable to the cable/Multipoint Distribution Service ("MDS") cross-ownership provision. Currently, the Commission applies its most stringent attribution criteria to the cable/MDS cross-ownership rules. Among other things, these criteria essentially preclude any entity from holding more than a five percent equity interest in both a cable system and a wireless cable system with a protected service area that overlaps with the cable system's franchise area.³ As noted in the FNPRM, this standard is more stringent than the attribution rules applied in connection with the Commission's other cross-ownership provisions.⁴

The Commission initially believed that the use of its strictest standards for purposes of applying the cable/MDS cross-ownership rules would best help to achieve the goals of "strengthening wireless cable and providing meaningful competition to cable operators."⁵ The Commission feared that cable operators would obtain MMDS and other wireless cable licenses in order to foreclose a potential competitor. Now that it has had the opportunity to consider the impact of these rules as applied to real-world situations, however, the Commission has determined that the "strict attribution standard severely restricts investment opportunities that

³ See 47 CFR § 21.912 (Note 1(A)).

⁴ FNPRM at ¶ 44.

⁵ *Id.*

are compatible with [its] goal.”⁶ The Commission tentatively concludes, therefore, that the same attribution criteria used for purposes of its broadcast (and broadcast/cable) cross-ownership rules should apply in the cable/MDS context as well.⁷ Blackstone agrees fully with the Commission’s conclusion and believes that its experiences in providing financing to the wireless cable and cable industries is illustrative of how the current attribution rules serve to stymie investment in situations that in no way raise the concerns that the rules were designed to address.

Blackstone and its affiliates are in the business of forming and managing investment funds. With more than \$1.27 billion in committed equity, the Blackstone investment funds have provided equity capital to a wide range of businesses, including businesses in the telecommunications industry. Blackstone’s investments often provide much-needed equity to companies that need additional capital to compete effectively in their fields.

Blackstone invested in Peoples Choice TV Corp. (“PCTV”), a wireless cable operator, at a time when the company required additional capital to expand its business and enhance its ability to compete effectively with cable operators. Blackstone, through three separate investment funds, acquired an approximate 15% voting interest in PCTV and obtained certain customary “investor protections” necessary to safeguard the value of its investment. Blackstone is not involved in the day-to-day operations of PCTV, but believes that its investment has enhanced significantly the ability of PCTV to increase its service to the public.

⁶ *Id.*

⁷ *Id.*

More recently, Blackstone, through other of its investment funds, sought to make an investment in a new cable joint venture that was seeking to acquire cable systems serving nearly 400,000 subscribers in communities, primarily rural, nationwide. As might be expected, some of the cable systems that the joint venture was planning to acquire were located within the service areas of certain of PCTV's wireless cable systems. Because Blackstone was planning to contribute more than 5% of the equity of the cable joint venture, it found that it was impossible to structure its investment in a manner that would allow it, absent waiver of the MDS/cable cross-ownership rules, to proceed with its investment plans.

This was so even though Blackstone was not involved in the day-to-day operations of either PCTV or the cable joint venture and only a small fraction of the cable systems to be acquired were to be located in PCTV service areas. Moreover, the structure of Blackstone's investments would preclude Blackstone from acting in any manner that would serve to lessen competition. Because Blackstone's investments in PCTV and the cable joint venture were to be made through separate investment funds, Blackstone owed separate fiduciary duties to each of the funds that would preclude it from even attempting to influence the actions of either PCTV or the cable joint venture in order to benefit the other investment. Moreover, even in the absence of these separate fiduciary obligations, both PCTV and the cable joint venture had other active investors that would preclude any such attempt.

This situation demonstrates that the attribution rules, as presently applied, could effectively block an investor in either the cable or the wireless cable industry from making an investment in the other industry in situations where the investment presented no threat to competition between the two industries. Blackstone believes that this result can serve only to harm the very industry that the rules were designed to protect. Indeed, there is every reason

to believe that investors considering a request to provide an infusion of capital to a participant in a fledgling industry -- which wireless cable in many ways remains -- that would effectively preclude future investments in the cable industry, would forego the investment in the less proven industry. As a result, the ability of wireless cable operators to obtain the capital they need to expand and compete would be significantly diminished.

Moreover, even if an investor is able to make an investment in both industries because no overlap in service areas existed at the time of the investment, the presence of that investor in both companies could preclude either entity from expanding into new areas already served by the other. This could occur even where the investor had absolutely no input into the decision to expand operations. Blackstone submits that such a result again serves to impede, rather than promote, competition.

Accordingly, Blackstone fully supports the Commission's efforts to ease the ability of investors to provide equity capital to both the wireless cable and cable industries without running afoul of the cross-ownership rules. Utilizing the same attribution rules applicable in the broadcast context is a good first step. In evaluating possible changes to those rules, moreover, Blackstone urges the Commission to adopt attribution rules that, while precluding

the harms the cross-ownership rules were designed to prevent, provide investors with the latitude to monitor and protect their investments.

Respectfully submitted,

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